



DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20220

13 FEB 1985

Dear Mr. Horowitz:

The purpose of this letter is to propose an amendment to Executive Order 12171 that would exclude the Customs Service's Office of Intelligence from the bargaining unit provisions of the Federal Labor Relations Act, Title VII of the Civil Service Reform Act of 1978 (FLRA) (5 U.S.C. § 7101, et seq.). Executive Order 12171 currently excludes the Office of Investigations of the Customs Service. The proposed amendment would add the Office of Intelligence to the existing exclusion. This amendment is necessitated by a recent reorganization of the enforcement, investigating and intelligence functions within Customs that resulted in the establishment of the Office of Intelligence. The reorganization does not affect the activities that justify the existing exclusion of the Office of Investigations.

Pursuant to 5 U.S.C. § 7103(b)(1) the President may issue an Executive Order excluding an agency or subdivision thereof from coverage under the labor relations statute if the President concludes that the agency or subdivision "has as a primary function intelligence, counterintelligence, investigative or national security work," and the President determines that the labor relations statute cannot be applied to the organization in a manner consistent with national security considerations. An exclusion pursuant to this section, therefore, involves a two-part determination by the President. First, an objective determination must be made that the group in question has as a primary function intelligence, counterintelligence, investigative or national security work. Second, the President must make the subjective finding that the application of the labor relations statute to the unit in question is inconsistent with national security considerations. We believe that an affirmative finding supporting the exclusion of the Office of Intelligence should be made on both criteria.

The Office of Intelligence, in the Office of Enforcement, is responsible for functional management of the intelligence system within Customs and directly supports both Headquarters' officials and field managers. The Office provides strong functional supervision regarding the timely tasking, collection, analysis, and dissemination of intelligence information. The Office of Intelligence is Customs' focal point for active, continuing liaison with the "intelligence community" and other national elements for intelligence matters. The Office aggressively obtains tactical intelligence, from external sources, for dissemination to the appropriate internal operational elements. Continuing contact is maintained with the Central Intelligence

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Agency (CIA), National Security Agency (NSA), Drug Enforcement Administration (DEA), El Paso Intelligence Center (EPIC), Federal Bureau of Investigation (FBI), U.S. Coast Guard, and other intelligence organizations.

In addition, Headquarters personnel of the Office of Intelligence represent the Department of the Treasury and Customs in a variety of Intelligence Community committees and other governmental working groups. Among these are the Technology Transfer Intelligence Committee, the Export Control Committee, and several sub-groups and task forces sponsored by these committees, such as the Narcotics Working Group and Law Enforcement Security Panel, the Narcotics Intelligence Managers Group, and the Interdepartmental Committee on Internal Security.

The Regional Intelligence Branches provide direction, guidance, and management to the Customs intelligence function at the regional and subordinate levels and are responsible to the Assistant Regional Commissioners (Enforcement). These branches provide technical advice on all aspects of the Customs intelligence systems and serve as points of coordination and contact with the Office of Intelligence at Headquarters.

Further, the branches coordinate the aggressive collection, reporting, analysis, and dissemination of intelligence within the region, and are responsible for providing direct and timely analytical support to the wide spectrum of Customs field operational elements. As a result, the Customs Office of Intelligence, both at Headquarters and in the field, has intelligence as its primary function and therefore meets the objective criterion of 5 U.S.C. § 7103(b)(1) for bargaining unit exclusions.

Given the primary function of the Office of Intelligence, we believe the President should find that the application of the labor relations statute to this unit would be inconsistent with national security. The intelligence, investigatory and national security functions of this entity would be severely compromised by the application of the labor-management relations provisions of Chapter 71. The very nature of union functions would require union representatives to negotiate over and to be knowledgeable of the duties, functions and procedures of the Office and its personnel, including conditions of employment relating to the tasking, collection, analysis, and dissemination of intelligence information. Full and proper negotiations concerning these conditions necessarily would involve the disclosure of sensitive

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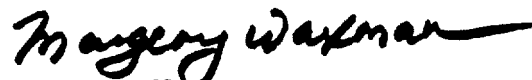
information and methods of operation. The result of such disclosures would be a negative impact on the Office's national security objectives.

For your information, we have enclosed a copy of a memorandum (Attachment A) from the Commissioner of Customs to the Assistant Secretary (E&O), which provides a more detailed statement of the justification for excluding this organizational unit. That memorandum was prepared prior to a change in the name of that organizational unit and refers to the Office of Intelligence as the Intelligence Division. In addition, we have enclosed a copy of the Assistant Secretary's concurrence and approval of the proposed amendment (Attachment B), and draft Executive Orders, in final and comparative type formats (Attachment C).

Modification of Executive Order 12171 as requested would be consistent with the existing exclusion of the Office of Investigation from the bargaining unit provisions of the FLRA and, as noted above, is necessary because of the reorganization of intelligence functions within the Customs Service. We recommend that the amended Executive Order be forwarded to the President.

If you have any questions, or need assistance, you may contact Selig S. Merber, Acting Assistant General Counsel (E&O), at 566-5404.

Sincerely,



Margery Waxman
Acting General Counsel

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Attachments